

E-Filed 3/7/07

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

RICARDA SORIA,

Petitioner,

v.

GLORIA HENRY,

Respondent.

Case Number C 06-4074 JF

ORDER GRANTING APPLICATION
FOR CERTIFICATE OF
APPEALABILITY

Petitioner has filed an application for certificate of appealability. The application is GRANTED. This Court dismissed the petition as an unauthorized second or successive petition pursuant to 28 U.S.C. § 2244(b). However, the Court noted that Petitioner's first federal habeas petition was dismissed as time-barred, and that the Court of Appeals for the Ninth Circuit has not directly addressed whether a dismissal based upon the statute of limitations constitutes an adjudication on the merits for purposes of determining whether a subsequent petition is successive. While this Court answered this question in the affirmative, reasonable jurists could

1 differ. If this Court erred in concluding that the instant petition is an unauthorized second or
2 successive petition, then the dismissal of Petitioner's claims for lack of jurisdiction was
3 erroneous.

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20 DATED: 3/7/07

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22 JEREMY FOGEL
23 United States District Judge
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1 Copies of this Order were served on the following persons:

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